

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION**

HOUSE BUSINESS AND LABOR COMMITTEE

Date: Tuesday, February 17, 2009
Place: Capitol

Time: 8:30 am
Room: 172

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

HB 496, HB 518

HB 582 _____

HB 589 _____

EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

HB 587 withdrawn HB 452 tie _____

HB 444 tie HB 386 Pass _____

HB 481 tabled _____

HB 357 Pass _____

COMMENTS:



REP. Bill Wilson, Chairman

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE: 2/17/09

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Rep. Michele Reinhart	X	
Rep. Bill Beck	X	
Rep. Elsie Arntzen	X	
Rep. Shannon Augare	X	
Rep. Paul Beck	X	
Rep. Tom Berry	X	
Rep. Carlie Boland	X	
Rep. John Fleming	X	
Rep. Timothy Furey	X	
Rep. Chuck Hunter	X	
Rep. Harry Klock	X	
Rep. Mike Milburn	X	
Rep. Pat Noonan	X	
Rep. Scott Reichner	X	
Rep. Cary Smith	X	
Rep. Gordon Vance	X	
Rep. Jeffery Welborn	X	
Rep. Bill Wilson	X	



HOUSE STANDING COMMITTEE REPORT

February 18, 2009

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Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 386** (first reading copy – white) **do pass as amended.**

Signed: _____

Bill Wilson
Representative Bill Wilson, Chair

And, that such amendments read:

1. Page 2, line 2.

Following: "disposition."

Insert: "(1) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of the person's remains may execute an affidavit before a notary public in substantially the following form:"

State of Montana }
County of _____ } ss

I, _____ [person designating another person to control the disposition of the person's remains] do hereby designate _____ [person who is provided with the right to control the disposition] with the right to control the disposition of my remains upon my death. I _____ have or _____ have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions.

Subscribed and sworn to before me this _____ day of the month of _____ of the year _____.

(2) "

Committee Vote:

Yes 18, No 0

Fiscal Note Required _____

HB0386001SC.hjd

2. Page 2, line 3.

Following: "7]"

Insert: "and subsection (1) of this section"

3. Page 2, line 5.

Following: "mind:"

Insert: "(a) a person designated by the decedent as the person with the right to control the decedent's disposition in an affidavit executed in accordance with subsection (1);"

Renumber: subsequent subsections

4. Page 3, line 3.

Strike: "(1) through (9)"

Insert: "(2) (a) through (2) (j)"

5. Page 3, line 6.

Strike: "(1) through (9)"

Insert: "(2) (a) through (2) (j)"

6. Page 3, line 8.

Following: "section 3"

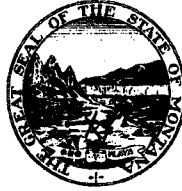
Insert: "and section 4(1)"

7. Page 3, line 11.

Following: "section 3"

Insert: "and section 4(1)"

- END -



HOUSE STANDING COMMITTEE REPORT

February 18, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 357** (first reading copy – white) **do pass**.

Signed: _____

Bill Wilson
Representative Bill Wilson, Chair

- END -

Committee Vote:

Yes 18, No 0

Fiscal Note Required ____

HB0357001SC.hjd

COMMITTEE FILE COPY

TABLED BILL

The **HOUSE BUSINESS AND LABOR COMMITTEE** TABLED **HB 481**, by motion, on **Tuesday, February 17, 2009**.

(For the Committee)



(Chief Clerk of the House)

(Time)



(Date)

February 17, 2009

Santella Baglivo, Secretary

Phone: 4457

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2/17 BILL NO HB 444 MOTION NO. _____
 MOTION: _____

DO Pass

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
Rep. Michele Reinhart	/		
Rep. Bill Beck		/	
Rep. Elsie Arntzen		/	
Rep. Shannon Augare	/		/
Rep. Paul Beck	/		
Rep. Tom Berry		/	
Rep. Carlie Boland	/		
Rep. John Fleming	/		/
Rep. Timothy Furey	/		
Rep. Chuck Hunter	/		
Rep. Harry Klock		/	
Rep. Mike Milburn		/	
Rep. Pat Noonan	/		
Rep. Scott Reichner		/	
Rep. Cary Smith		/	
Rep. Gordon Vance		/	
Rep. Jeffery Welborn		/	
Rep. Bill Wilson	/		

9-9
tie

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2/17 BILL NO. HB 452 MOTION NO. _____
MOTION: _____

Do Pass as Amended

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
Rep. Michele Reinhart	/		
Rep. Bill Beck		/	
Rep. Elsie Arntzen		/	
Rep. Shannon Augare	/		/
Rep. Paul Beck	/		
Rep. Tom Berry		/	
Rep. Carlie Boland	/		
Rep. John Fleming	/		/
Rep. Timothy Furey	/		
Rep. Chuck Hunter	/		
Rep. Harry Klock		/	
Rep. Mike Milburn		/	
Rep. Pat Noonan	/		
Rep. Scott Reichner		/	
Rep. Cary Smith		/	
Rep. Gordon Vance		/	
Rep. Jeffery Welborn		/	
Rep. Bill Wilson	/		

9-9
tie

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2/17/09 BILL NO ^{HB} 481 MOTION NO. _____

MOTION: _____

DO PASS

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Rep. Michele Reinhart		/	
Rep. Bill Beck		/	
Rep. Elsie Arntzen		/	
Rep. Shannon Augare		/	/
Rep. Paul Beck		/	
Rep. Tom Berry		/	
Rep. Carlie Boland		/	
Rep. John Fleming		/	/
Rep. Timothy Furey	/		
Rep. Chuck Hunter		/	
Rep. Harry Klock		/	
Rep. Mike Milburn		/	
Rep. Pat Noonan	/		
Rep. Scott Reichner		/	
Rep. Cary Smith	/		
Rep. Gordon Vance		/	
Rep. Jeffery Welborn		/	
Rep. Bill Wilson	/		

Tabled

CJ-124

AUTHORIZED COMMITTEE PROXY

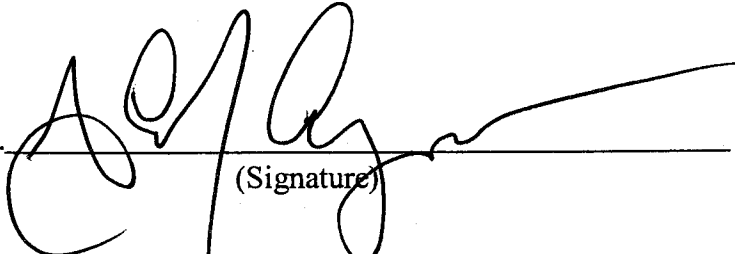
I request to be excused from the Business & Labor

Committee because of other commitments. I desire to leave my proxy vote with:

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 444	X	
HB 481		X
HB 357	X	
HB 452	X	
HB 386-AMD	X	
HB 386	X	

BILL/AMENDMENT	AYE	NO

Rep.  (Signature)

Date _____

**AUTHORIZED
COMMITTEE PROXY**

I request to be excused from the Business & Labor

Committee because of other commitments. I desire to leave my proxy vote with:

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 444	X	
HB 481		X
HB 357	X	
HB 452	X	
HB 386 ^{Amo}	X	
HB 386	X	

BILL/AMENDMENT	AYE	NO

Rep. JL Jre
(Signature)

Date 1/06/09

**Montana House of Representatives
Visitors Register**

BUSINESS AND LABOR COMMITTEE

Date 2/17/09

Bill No. HB 496 Sponsor(s) Rep Howard

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Keith Allen	IBEW 233	X		
Shahid Haque-Haque, Sr.			X	
MARY BOWEN	Self	X		
Steve Wade	MTA	X		
Ronda Wiggers	Art Fl/Helena Chamber		X	
Scott Christ	ACLU		X	
Keith Messmer				X
Edgar Smith	Self		X	
Jamee Greer	Human Rights Network		X	
WEBB BROWN	MT CHAMBER	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

**Montana House of Representatives
Visitors Register**

BUSINESS AND LABOR COMMITTEE

Date 2/17/09

Bill No. HB 518 **Sponsor(s)** Rep Peterson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Jim Espar	The Rancher	✓		
Clayton Fiscus	Real Estate industry	✓		
Fred Rogers	Lone Tree Realty	X		
Joe Roberts	Mt. Assoc Realtors	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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**Montana House of Representatives
Visitors Register**

BUSINESS AND LABOR COMMITTEE

Date 2/17/09

Bill No. HB 589 **Sponsor(s)** Rep Pomnichowski

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Jaqueline Denmark/12	Am Jns Assn		X	
Bruce Spencer/12	PLIAA		X	
Tim Fitzpatrick	MTSBA		X	
Carly Jones	Liberty H.W.		X	
Andrea J. Olsen	MTLA	X		
Audy Scott	Myself	X		
Kevin Braun	State Pund		X	
DOUGLAS H NEIL	MT. STATE FIREMEN	X		
Sheryl Wood	MT Assoc of Co		X	
NEBB BROWN	MT CHAMBER		X	
Bonda Wiggers	GT/Polena Chamber		X	
Jason Todhunter	MLA		X	
Riley Johnson	NFIB		X	
AND LUTHERALL	MTLA	X		
Bibb Houghton	MTSTA		X	
Brian Skans	AMCA		X	
Didna Ferreter	Labork Ind.			X
Riley Johnson	NFIB		X	
Don Judge	MRWRC	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

INFORMATION REGARDING NEED AND IMPACTS OF HB 452
Medical Privacy in Workers' Compensation

EXHIBIT- 12
DATE 2-17-01
HB 452

Opponents have argued that passage of HB 452 would cause three problems:

- (1) Delay in verifying that a claim for workers' compensation coverage is actually work related.
- (2) Delay in authorization for treatment and payment to health care providers resulting in longer periods of off-work status.
- (3) Raising costs of workers' compensation – although no figures were cited or estimates provided.

The reality of passage of HB 452 is as follows:

With the sponsor's proposed amendment to reinsert the language of subsection (2) on page one of the bill, lines 17 through 27, insurers will be able to obtain the information needed to verify whether most claims are actually job-related or not and what immediate and perhaps even projected medical treatments will be necessary.

Removal of the two subsections – subsection 3 on page one and subsection 5 on page three of the bill only really changes the extent of the initial claim filing document so that signing it would no longer mean that the insurer or its agent would have unfettered communications with an injured worker's health care provider without prior knowledge of the injured worker or his/her health care providers. *Nothing in the workers' compensation statutes prevents an injured worker and an insurer from signing any subsequent release of medical information and communication between the parties.*

So, if an injured worker and an insurer subsequently agreed in writing that the insurer's agent would be allowed to contact the health care providers for information relevant to injuries, treatment options and costs without prior notification to the worker and/or his/her representatives... they could do so.

Obviously, such an agreement might include a clause indicating that such communication would be for verification of medical treatment options and billing and not for verification or denial of a claim, although nothing requires such agreements to contain such a clause.

Most workers' compensation claims proceed through the process with little to no conflict over legitimacy or treatment options. It is likely only in those instances where controversy or conflict arise that any delay would occur, and with many of those a simple subsequent authorization for communication as indicated above, or a phone call to the injured worker would resolve delay problems.

The problem with having the initial signed claim for benefits used as an open ended authorization for communication between the insurer's agents and the injured worker's medical providers is this:

- (1) If an injured worker doesn't sign the claim for benefits form within a specified period of time the claim can be automatically denied. Thus it's a *"damned if you do – damned if you don't"* situation.
- (2) A seriously injured worker who is in the throes of trying to figure out if or when they will ever work again, what kinds of treatments/surgeries they might be anticipating, how they're going to take care of their family, pay their bills, etc. usually doesn't have any depth of knowledge of the WC system or even representation to let them know about the pitfalls, delays, limitations, etc of the system, who the players are and how they can best manage to get through all the processes involved.
- (3) Allowing a worker to get a sense of what's happening to them will help them make a more informed decision regarding communications between their health care providers and the workers' compensation insurer.

The current law has been in effect since only 2003 and already the Workers' Compensation Court has determined that it is unconstitutional because of the invasion of an individual's right to privacy. Unfortunately, when the decision was appealed to the State Supreme Court it was remanded because the Worker's Compensation Court was, at that time, not considered a court of competent jurisdiction for such cases. It has since been made such a court. So, while the Montana Supreme Court has yet to consider the appeal on the merits of the decision made by the WC Court, it is reasonable to project that they will, at some point hear the matter and given their propensity for upholding Montana's Constitutional Rights to Privacy and Equal Treatment Clauses, likely sustain a holding that the current law is unconstitutional.

Of course that conclusion is subject to argument and the opponents of HB 452 would have you believe that the law is indeed constitutional and that they will win this issue before the Montana Supreme Court.

Regardless of that pending (perhaps years away) situation, one fact is ultimately clear on its face... The opponents argue that HB 452 will drive up costs of workers' compensation when the facts suggest otherwise. The law has been in place, and used by the insurance industry, since 2003 and Montana's Workers' Compensation premium rates have continued to rise. Our premium percentage rate per \$100 of payroll is now considered the second highest in the nation. It is obvious that the 2003 statute has had little, if any impact on holding down rates.

Nothing is more private than an individual's personal health. It is imperative that the Montana Legislature recognize and uphold the Montana Constitution's rights to privacy in this most personal area.

As an aside.... **Just who are these insurance adjusters that have unfettered access to an injured worker's personal health information?** Well, the House Business and Labor Committee and the full House just passed **HB 283** sponsored by Rep. Himmelberger. That bill provides for a "**voluntary certification**" of workers' compensation claims examiners (the term used in lieu of adjusters). While some workers' compensation claims examiners are currently trained and certified in handling other types of claims ie: property and casualty, life insurance, Montana doesn't have any requirement that these most important claims examiners have any license, certificate or educational achievement to make life and death decisions about Montana's injured workers. Some insurers have their own training programs, but no law exists to mandate any standards of knowledge or action. HB 283 would make education and training a voluntary option for claims examiners. So, potentially untrained employees of a workers' compensation insurance provider are, by virtue of current law, gaining access to communication with your health care providers without your prior knowledge, and, as shown above, any reasoned consent.

Right now, insurers argue that HB 452 should die and you should allow the issue of Constitutionality to be determined by the Montana Supreme Court and if the law is overruled, than it can be changed in a subsequent legislature. We believe just the opposite. Protect an injured workers' right to medical privacy now because we shouldn't allow unfettered communications to take place for those workers injured between now and the 2011 legislative session. Thank you